IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

C.**R. No. 636 of 2006 (O&M)**
Date of Decision : 25.8.2009

Raghubir Singh & others

..... Petitioners

Versus

Tajinder Pal Singh & others

..... Respondents

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr. B.S. Bedi, Advocate
for the petitioners.

Mr. Pritam Saini, Advocate
for respondents No. 1 & 2.

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VINOD K. SHARMA, J. (ORAL)

This revision petition is directed against the order dated 15.1.2007 passed by the learned Civil Judge (Jr. Divn.), Karnal allowing the application moved by the defendant / respondents under Order 6 Rule 17 C.P.C. to amend their written statement, so as to incorporate the relief of counter claim.

The respondent / defendants by way of counter claim sought to raise counter claim to seek relief of redemption of mortgage.

The learned trial Court was pleased to allow the application by recording a finding as under :-

> *"6. So far as the first ground is concerned, I am of the view that defendants / applicants claiming ownership of the suit land on the basis*

> *of judgment and decree passed by the Civil Court. It is further admitted position between the parties that the said decree is challenged in the present suit. So as this stage, it cannot be said that defendants / applicants are not owner of the property. Now, adverting to deal with the second ground i.e. point of limitation, both the parties placed reliance on judgments passed by Hon'ble Supreme Court, as discussed above. There is absolutely no doubt about the law. It is also settled law that question of limitation is a mixed question of law and facts, which cannot be decided at this stage for want of evidence."*

The learned counsel for the petitioner challenged the impugned order primarily on the ground that under Order 8 Rule 6-A of the Code of Civil Procedure it was not open to the defendant / respondents to file a counter claim after the filing of the written statement, as the cause of action, if any, had accrued to the defendant / respondents prior to filing of written statement.

The learned counsel for the petitioners in support of this contention, referred to Order 8 Rule 6-A of the Code of Civil Procedure, which reads as under :-

> *"6A. Counter-claim by defendant.- (1) A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the*

defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not.

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints."

The contention of the learned counsel for the petitioners cannot be accepted in view of the authoritative pronouncement by the Hon'ble Supreme Court in the case of ***Mahendra Kumar and another Vs. State of M.P. And others AIR 1987 Supreme Court 1395(1)***, wherein the Hon'ble

Supreme Court has been pleased to lay down as under :-

> *"15. The next point that remains to be considered is whether R.6A(1) of O.VIII, Civil P.C. bars the filing of a counter-claim after the filing of a written statement. This point need not detain us long, for R. 6A(1) does not, on the face of it, bar the filing of a counter claim by the defendant after he had filed the written statement. What is laid down under R. 6A(1) is that a counter-claim can be filed, provided the cause of action had accrued to the defendant before the defendant had delivered his defence or before the time limited for delivering his defence has expired. Whether such counter claim is in the nature of a claim for damages or not. The High Court, in our opinion, has misread and misunderstood the provision of R. 6A(1) in holding that as the appellants had filed the counter claim after the filing of t he written statement, the counter claim was not maintainable. The finding of the High Court does not get any support from R. 6A(1), Civil P.C. As the cause of action for the counter claim had arisen before the filing of the written statement, the counter claim was, therefore, quite maintainable. Under Art. 113, Limitation Act, 1963, the period of limitation of three years from the date the right to sue accrues, has been provided for any suit for which no period of limitation is provided elsewhere in the Schedule. It is not disputed that a counter claim, which is treated as a suit under S. 3(2)(b), Limitation Act,*

> *had been filed by the appellants within three years from the date of accrual to them of the right to sue. The teamed District Judge and the High Court were wrong in dismissing the counter claim."*

The learned counsel for the petitioners also contended that the plea raised in the counter claim is contrary to the defence taken in the written statement, therefore, the learned trial Court committed an error in allowing inconsistent / contradictory pleas.

This plea of the learned counsel for the petitioners again cannot be accepted as defendants can raise inconsistent pleas to defeat the rights of the plaintiffs. The amendment could not be rejected merely on the ground that the plea raised in the counter claim is contradictory to the plea raised in the written statement.

It is also pertinent to mention here that as per the provisions of the Code of Civil Procedure a counter claim is treated, as a separate suit, and once a separate suit was maintainable in law, the amendment sought can not be denied on the ground that the pleas raised in the counter claim are inconsistent to the pleas raised in the written statement. The order passed by the learned trial Court does not suffer from any illegality, calling interference in exercise of jurisdiction under Article 227 of the Constitution of India.

No merit.

Dismissed.

25.8.2009 **(VINOD K. SHARMA)**
'sp' **JUDGE**